

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 106 of 1994

in

SPECIAL CIVIL APPLICATION No 1436 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

INSPECTOR GENERAL OF PRISONS

Versus

PURSHOTTAM KHIMJI

Appearance:

Mr. S.T.Mehta AGP for M/S MG DOSHIT & CO for Appellant
Respondent No. 1 served

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/11/1999

ORAL JUDGEMENT(per:Majmudar.J)

#. This is an appeal under clause 15 of the Letters Patent against the judgment of the learned Single Judge passed in Special Civil Application No.1436 of 1981. The respondent herein had filed the said Special Civil Application challenging the order of the departmental inquiry proceedings. As per the facts stated in the main petition the respondent-petitioner herein had joined the

service in Jail Department as a Sepoy on 15.4.65 and at the relevant time he was working as a Sepoy in the Open Jail at Amreli. On 20.3.1980, five bags of wheat kept in the compound of the Jail at Amreli which were found to be stolen. Three bags of wheat out of the five stolen bags were recovered from the house of the respondent. Thereupon the respondent was served with the charge sheet on 17.7.1980 calling upon him to give his explanation in respect of the charges contained in the charge-sheet within 7 days from the date of receipt of the said charge sheet. Said charge sheet was annexed as Annexure.A to the main petition. The respondent herein filed his reply to the said charge sheet, which was annexed at Annexure.C to the main petition. Thereafter, statement of the present respondent was recorded and the respondent gave his statement to the Superintendent of the Open Jail at Amreli on 29.3.1980 by which he denied his involvement in the said incident. After the receipt of the reply, a departmental inquiry was initiated against the respondent in respect of the charges levelled against him and the respondent was asked to attend the inquiry proceedings on 18.9.80. At that time the respondent was working in the Central Jail at Ahmedabad. The respondent requested the Superintendent, Central Jail, Ahmedabad on 16.9.1980 to provide him expenses so that he could attend his departmental inquiry proceedings at the cost of the Government. He, in fact wrote a letter to that effect on 16.9.1980 which is at Annexure.D to the main petition. However, no reply was given to the respondent regarding said request and the departmental inquiry proceedings were completed ex-parte against the respondent and thereafter the inquiry officer had submitted his report to the concerned authority i.e. the Disciplinary Authority. The Disciplinary Authority thereafter served the present respondent with a second show cause notice on 27.11.1980 calling upon the respondent to show cause as to why he should not be dismissed from service in view of the fact that the charges levelled against him were established in the departmental inquiry. Along with the second show cause notice, copy of the report of the inquiry officer was also made available to the respondent. Present respondent gave reply to the second

show cause notice on 12.12.1980 which is part of the compilation of the main petition at Annexure.F. In the meanwhile present respondent also filed a writ petition in this High Court being Special Civil Application No. 775 of 1981. Said petition was withdrawn as it was filed at a premature stage. However, the learned Single Judge at that time directed the disciplinary authority not to implement the order, if at all adverse to the respondent for a period of 7 days. Thereafter the disciplinary authority passed an order on 20.4.1981 by which present respondent was dismissed from service. Said order at Annexure G to the main petition was challenged by the present respondent by filing Special Civil Application No.1436 of 1981.

#. The learned Single Judge while admitting the petition had also stayed the order of dismissal which was not to be implemented for a period of 7 days. Therefore, all through out during the pendency of the petition, the respondent was in service. The learned Single Judge thereafter by the impugned judgment and order dated 5.2.1992 allowed the said petition and the impugned order at Annexure. G was quashed and set aside and Rule was accordingly made absolute. Aforesaid judgment of the learned Single Judge is challenged in this Letters Patent Appeal by the present appellant.

#. We have heard Mr. S.T.Mehta learned A.G.P. for the appellant-State. Before the learned Single Judge, on behalf of Government, no Assistant Government Pleader was present. However, we have already gone through the affidavit in reply filed by the Government in the main petition and we have also considered the merits of the main petition.

#. At the time of hearing of this appeal it was contended by Mr. S.T.Mehta that the respondent has not attended the departmental inquiry proceedings and therefore, the inquiry was naturally conducted in his absence. It was submitted that the respondent could have made personal request for expenses for attending the departmental inquiry proceedings. However, considering the affidavit in reply filed by the State Government as well as in view of the reasoning given by the learned Single Judge in his judgment we are not impressed by the aforesaid submission of Mr. Mehta. It is not in dispute that along with the respondent there were two other delinquents who were also subjected to the said departmental inquiry proceedings and they were given the

costs for attending the departmental inquiry proceedings; while present respondent was not given the said benefit of providing costs for attending the departmental inquiry proceedings. In the affidavit in reply which was filed in the main petition by the present appellant it is stated in para 5 that present respondent was informed by the Superintendent , Bhavnagar District Prison by letter dated 11.9.80 through Ahmedabad Central Prison on 13.9.90 to remain present at Amreli Open Prison for oral inquiry and that in reply to that letter the respondent had addressed a letter dated 16.9.80 informing that he was prepared to go to Amreli at Government expenses. This letter was received by the branch of Ahmedabad Central Prison on 18.9.80. However, it is further stated in the affidavit in reply that the respondent could have requested the Superintendent or any other officer personally and could have got the Railway/S.T. warrant or money for ticket fare but he had not made any such efforts and accordingly he had not co-operated in the inquiry proceedings. As stated above, it is not in dispute that when two other co-delinquents who were also facing the aforesaid charges were provided with Government expenses for attending the departmental inquiry against them, there was no reason for denying the same benefit to the present respondent and because of the same present respondent could not attend the departmental inquiry proceedings initiated against him and accordingly the inquiry proceedings went ex-parte against the present respondent. Therefore, he was denied reasonable opportunity to defend his case in the departmental inquiry instituted against him . In fact nothing has been shown as to why the present respondent was denied the said benefits when the said benefits were given to other co-delinquents. The learned Single Judge considered the said facts and ultimately has allowed the petition. The learned Single Judge has observed in his judgment that his judgment shall not preclude the respondent (appellant herein) from proceeding further with the enquiry proceedings against the present respondent and the same can be done in accordance with law if the disciplinary authority thinks it fit and to carry out the enquiry proceedings against the petitioner to its logical conclusion. Therefore, an opportunity was also given to the disciplinary authority to conduct de novo enquiry proceedings against the present respondent in accordance with law. Since the order of dismissal of the present respondent was set aside only on this limited ground, we do not find any infirmity in the order of the learned Single Judge. The petition was filed in the year 1981 and all through out the present respondent was also protected by the interim relief and the disciplinary

authority was also given an opportunity of fresh inquiry in accordance with the principles of natural justice and in accordance with law. In view of these circumstances we do not find any illegality or infirmity in the judgment and order passed by the learned single Judge. We accordingly dismiss this Letters Patent Appeal. No order as to costs.

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